



Town of Harpswell  
Board of Appeals Minutes  
August 24, 2016  
Adopted September 28, 2016

**Members Present**

Ned Simmons, Chair  
Ellen Lebauer  
Ellen Shillinglaw  
Pat Lawson

**Members Absent**

Jim Knight

**Staff Present**

William Wells, Code Enforcement Officer  
Fred Cantu, Code Enforcement Officer  
Diane Plourde, Recording Secretary

The Town of Harpswell Board of Appeals meeting, being duly advertised in the *Brunswick Times Record* was called to order at 6:30 p.m. by Ned Simmons, Chair. The chair read the agenda, introduced the board members and reviewed the procedures.

**Old Business:** James & Priscilla Ragonese, 150 Tondreau Point Road Map 48 Lot 82 – Withdrawal of Appeal

The Chair told the Board that Mr. Ragonese has completed a land swap and has avoided the need for an appeal. Therefore they wish to formally withdraw their application for a variance.

**Ned Simmons moved seconded by Ellen Shillinglaw to accept the withdrawal of their variance request from James & Priscilla Ragonese. Motion carried 4-0.**

**New Business:** 16-08-01BA – Jane Waddle & John Powers, 2 Lobster Lane Map 45 Lot 67 – Section 14.2.1 Administrative Appeal

A site visit on property was attended by Ned Simmons, Pat Lawson and Ellen Shillinglaw.

Jane Waddle presented the Board with a narrative (attached).

The Chair noted that there was a timeliness issue since this has gone back for a long time. The only thing not beyond the 40 days is the final violation notice. The Town's attorney advised that it would be wise to hear the appeal. It was noted that Ms. Waddle was not advised of her 40 day rights to appeal from the Code Office and the Chair finds that this appeal should be heard by the Board.

**Ned Simmons moved seconded by Ellen Lebauer to waive the timeliness issue and find that there is good cause to waive the 40 day requirement. Motion carries 4-0.**

Ms. Waddle told the Board she was appealing the violation and the proposed fine. She read the narrative distributed.

William Wells, CEO said the email sent to Ms. Waddle explains most of what is in question. He met with John Powers at the property about a couple of hazard trees and Mr. Wells agreed that those could be taken but the taking of any other trees was not discussed. When the situation came up of the overcutting, he thought they could continue with the semi-gentlemen's agreement plan to replant. But that did not take place. Mr. Wells indicated that the neighborhood residents are watchful of each other and the cutting of trees was noticed by a neighbor. This was how the DEP was notified. Mr. Simmons said this is difficult to remediate because all the ground cover was removed. Mr. Wells agreed.

John Powers, owner, told the Board that the ground cover was never there because there was no sunlight, the trees that were cut were blocking the sun. He said that an owner has the right to cut trees on their property if it conforms to the code and he feels that these trees were damaged or left no opening.

The Chair read the Shoreland Zoning Ordinance *"In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover....shall not be cut, covered, or removed...."*

Mr. Powers said there was no ground cover removed because it was so dense with unhealthy trees and now with the replanting, there are trees growing. Mr. Wells said that as this point they have satisfied the replanting issue.

Fred Cantu, CEO read the November 23<sup>rd</sup> letter from Mike Morse, DEP, in part, *"In addition to the absence of ground cover vegetation and leaf litter/duff layer with the 75-foot buffer, we determined that there are at least 25 tree and tree sapling stumps ranging from approximately 1 inch in diameter up to 4 inches in diameter, and an additional 7 larger tree stumps, all located within the buffer."* He said that is where the problem lies because if there was no ground cover, the trees were holding it all together.

Mr. Cantu read a letter from the DEP dated August 23<sup>rd</sup>, in part, *"During our recent inspection we advised that at least 26 trees must be replanted within the areas where the violation exists.... Recognizing that soil conditions might restrict the size of replanted trees, we provided two recommendation: First, if conditions allow, similar native softwood tree species that are a minimum of 3' in height and similar native hardwood species that are a minimum of 6' in height must be used for the replanting. Second, if soil conditions prove to be too shallow to support the planting of the larger tree saplings..."* He said Terrance Kenney did do a series plantings of saplings and pictures were given to the Board to review. Mr. Cantu said that even though the Code Office is satisfied with the replanting, there is still a violation agreed to by the DEP.

The Chair said that this is a de novo review and they have decide now if there was a violation and if it is appropriate for the Code Office to recommend a fine. Mr. Wells said

that historically if the violator demonstrates a remedy to the situation and can produce receipts to satisfy the violation, in the past the Selectmen may take that into consideration.

Ellen Shillinglaw said that there is common knowledge in Harpswell that the 75 foot buffer has to be protected but this property looks like it was stripped. She said there could be ways to replant with special technology to put more soil down in rocky areas. But there was no mention as to how these saplings will be taken care of since this is a rental property, who will maintain and assure the growth.

Ms. Waddle explained replanting to the board, but it is inaudible to the microphone.

**Ned Simmons moved seconded Ellen Lebauer that we find there was a violation of the tree cutting ordinance under Section 15.15.2.2.5 of the Shoreland Zoning Ordinance. Motion carries 4-0.**

**Ned Simmons moved seconded by Ellen Lebauer that per Section 13.6 of the Basic Land Use Ordinance that since we found that a violation had occurred that a recommendation to the Selectmen of a fine for that violation is appropriate. Motion 3-1 Opposed.**

The Chair noted to the owners that they have a right to ask for Reconsideration within 10 days of the decision and 45 days from day of this decision to reconsider to the Superior Court.

16-08-02BA – Michael McCabe, Barnes Point Road, Map 2 Lot 35 – Section 14.2.1  
Administrative Appeal

The Chair wants to address the issue of timeliness of the appeals. He asked Mr. McCabe how he became aware of the permit. Mr. McCabe told the Board that he noticed the site inspector on property and asked what was going on and was told there was a house to be built. The permit was granted on June 15 and found out by accident that this was to be a structure of considerable size and he feels not in conformance of town code. He said he became aware in late June early July. He received an email from the applicant dated July 26<sup>th</sup> that indicated she was aware he was not happy with the design of the building. He said he visited the Code Office and was not told of the 40 day time limit. He then spoke with the Town Administrator and was told of the 40 day time limit. His payment for and appeal applicant was accepted by the Code Office.

Mr. Cantu said that on May 31<sup>st</sup> the application was received by the Code Office; on June 8<sup>th</sup> he wrote a memo of his thought process on the approval; on June 15<sup>th</sup> the application was approved, and on June 22<sup>nd</sup> Mr. Cantu and Mr. McCabe met for lunch and Mr. McCabe was made aware of the application. Mr. McCabe said there was no building permit posted on property.

Jean Calderwood said there was no work done on property before the permit was issued. She said that she wishes to age at home and with her friend they plan on a single family home with two kitchens. The house plans could accommodate a sibling possibly living with her. She said the building activity started about a week after the permit was issued.

Bob Coombs, R.L. Coombs Inc., is excavating the property, said the permit was on site but inside the windshield of his truck and will be posted inside the house once framing begins.

Williams Wells noted, for the record, that concerned citizens do visit the Code Office to see if permits have been issued.

**Ned Simmons moved seconded by Ellen Lebauer that we find that there is good cause to extend the time limit for Mr. McCabe's filing based on the discussions we've had relative to the posting of the permit and based on the time it was reasonable to expect Mr. McCabe to have had knowledge of the activity. Motion carries 4-0.**

Mr. McCabe explained to the Board his reasons for the appeal. He said the initial building plans show the structure as a duplex. The lot is a 40,000 sf property and a duplex by code should be an 80,000 sf property.

Jean Calderwood said she first came to the Code Office and discussed the building plans and made changes to the initial plans. Fred Cantu worked with Ms. Calderwood to help make the plans conforming.

The Board continued the discussion with the applicants, abutters and Code Officers. The Chair reviewed the criteria within the permit application. The Chair noted that based on all the criteria other than the determination as to whether this is a single family or a 2-family dwelling the applicant has met the ordinance on that criteria.

**Ned Simmons moved seconded by Ellen Shillinglaw that based on earlier discussions referencing the configuration and the lay-out of the building, we rule that this proposed structure is a 2-family dwelling and not acceptable on a 40,000 square foot lot. Motion carries 3-1.**

The Chair told the public that any aggrieved party has the right to request a reconsideration of the decision within 10 days of this determination and may also appeal to Superior Court within 45 days. The Chair will prepare a draft findings and schedule a special meeting to vote on the findings.

**Other Business:** Election of Officers

**Ellen Shillinglaw moved seconded by Pat Lawson to maintain the status quo. Motion carries 4-0.**

Board of Appeals  
Minutes of August 24, 2016  
Adopted September 28, 2016

The Board scheduled a special meeting on Wednesday, August 31, 2016 at 6:30 PM to finalize the Notices of Decision.

**Adjournment:** Meeting adjourned at 8:50 PM

Respectfully submitted by:

Diane E. Plourde  
Recording Secretary

Attachments